

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

HELEN LANCIA and GARY LANCIA, :
her husband, :

Plaintiffs, :

vs. :

UNITED STATES POSTAL :
SERVICE, :

Defendant. :

CIVIL ACTION NO. 3:CV-05-0124

(JUDGE CAPUTO)

MEMORANDUM ORDER

Before me is Defendant's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1),
(Doc. 27). The Defendant is the United States Postal Service.

The Defendant makes several contentions regarding its grounds for dismissal. First, it seeks to dismiss the loss of consortium claim by Gary Lancia, the spouse of Helen Lancia. The basis for the claim dismissal is that the loss of consortium was not raised at the administrative level. Second, the Defendant contends that Plaintiff Helen Lancia's shoulder injury should be dismissed for lack of subject matter jurisdiction because it was never raised to the United States Postal Service administratively. Third, and last, the Defendant claims that the action should be dismissed because it is brought against the United States Postal Service and not the United States, which is the requirement of the Federal Tort Claims Act.

In reverse order, it is clear that the case is brought against the United States Postal Service and not the United States. The suit is required to be brought against the United States, and only the United States, in accordance with 28 U.S.C. §1346(b) and §2679(a).

See Dilg v. United States Postal Service, 635 F.Supp. 406 (D.N.J. 1986) citing *Allen v. Veterans Admin.*, 749 F.2d 1386, 1388 (9th Cir 1984). Therefore, this case will be dismissed for lack of subject matter jurisdiction, without prejudice.

Since I have determined that it should be dismissed for lack of subject matter jurisdiction, I do not reach contentions one and two, since it is unnecessary.

NOW, therefore this 27th day of July, 2006, the Defendant's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(1) on the basis that there is no subject matter jurisdiction since the action is not instituted against the United States is granted, without prejudice.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge